

REMARKS

Reconsideration and allowance of this application in light of the above-amendments and the following remarks are respectfully requested. Pending in this application are independent Claims 1, 7, 13, 19, and dependent claims 3-6, 9-12, 15-18, and 21-24. Claim 18 has been amended to correct the claim dependency.

I. Rejection based on Double Patenting

Claims 1, 3-7, 9-13, and 15-19 stand rejected under the doctrine of obviousness-type double patenting over Claims 1-15 of co-owned U.S. Patent No. 6246453 (the '453 patent).

Applicants respectfully traverse this rejection.

As an initial matter, Applicants note that the pending claims and the claims of the '453 patent are directed to different statutory classes. Claims 1, 3-7, 9-13, 15-19, and 21-24 of the present application are directed to methods, whereas claims 1-15 of the '453 patent are devices. An obviousness-type double patenting (OTDP) rejection is proper only if the claims are obvious variants of each other. In addition, "[t]he test is not whether the [application claims] would be obvious to one of ordinary skill in the art from reading the specifications and claims of the first patent. The

inquiry is more limited-the question is whether the 'tangible embodiment' of a claim in the first patent has been modified in an obvious manner." *Carsonite International Corp. v. Carson Manufacturing Co.*, 460 U.S. 1052 (1983). Here, the tangible embodiments of products recited by the claims of the '453 patent have not been modified in an obvious manner in the present application. Instead, the claims of the present application are drawn to an entirely different statutory classification, processes. Therefore, the claims of the present application are patentably distinct from the claims of the '453 patent.

In addition, claims 1, 3-7, 9-13, 15-19, and 21-24 of the present application include producing a parallel electric field, a liquid crystal material that is aligned in a hybrid alignment nematic mode, and a reflective type liquid crystal display device that includes a reflecting layer.

Claims can be deemed obvious variants of prior claims only if each and every element is taught or suggested by the prior claims. Here, Claims 1-15 of the '453 patent do not recite producing a parallel electric field, a liquid crystal material that is aligned in a hybrid alignment nematic mode, nor a reflective type liquid crystal display device that includes a reflecting layer. In an attempt to overcome this, the Examiner asserts in paragraph 3 of the office action, that the use of a

reflective display device, the use of in-plane switching display device, and hybrid alignment nematic mode are all known in the art. No references are cited in support of this assertion. In addition, there is no assertion as to what in the claims of the '453 patent would provide a basis for suggesting the combination of the aforementioned limitations with claims to a different statutory class. Nor is any motivation to combine ever asserted. There was no explanation of what specific understanding or technological principle within the knowledge of one of ordinary skill in the art would have suggested the combination. Instead, merely a rote invocation of the skill in the art is asserted. "[T]he examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed." In re Rouffet, 47 USPQ2d 1453. This requirement has not been met. Therefore, Applicants assert that a prima facie case of obviousness-type double patenting has not been shown.

Accordingly, Applicants respectfully request the reconsideration and withdrawal of the obviousness-type double patenting rejection of Claims 1, 3-7, 9-13, 15-19, and 21-24.



Conclusion


In view of the above, the specification and drawings are in order and all the claims are in condition for allowance. Such action is respectfully requested. Enclosed is a \$400.00 check for the Petition for the Extension of Time fee. Please apply any other charges or credits to Deposit Account No. 06-1050. If the Examiner would like to discuss the matter further, the undersigned may be contacted at (858) 678-5070.

Attached is a marked-up version of the changes being made by the current amendment.

Respectfully submitted,

Date:

October 15, 2002


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VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the claims:

Claim 18 has been amended as follows:

18. (Amended) A method according to claim [7] 13, wherein each of the first and second insulating substrate is one selected from the group consisting of glass, quartz and polyethylene sulfate.

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